

# **Arizona Military Airport Preservation Committee**

## ***Annual Report***

December 13, 1999

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# ARIZONA STATE LEGISLATURE

TO: PRESIDENT OF THE SENATE  
SPEAKER OF THE HOUSE  
GOVERNOR OF THE STATE OF ARIZONA  
DEPARTMENT OF LIBRARY, ARCHIVES AND PUBLIC RECORDS

FROM: Senator Edward J. Cirillo  
Representative Jean Hough McGrath

DATE: December 13, 1999

SUBJECT: Arizona Military Airport Preservation Committee 1999 Annual Report

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Attached please find the 1999 Annual Report for the Arizona Military Airport Preservation Committee.

EJC/JHM/jas

cc: Larry Chesley, House Analyst  
Jim Keane, Senate GES Analyst

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STATE DOCUMENTS

**ARIZONA  
MILITARY AIRPORT  
PRESERVATION COMMITTEE  
ANNUAL REPORT  
1999**

**Committee Members**

Senator Edward J. Cirillo, Co-Chair  
Representative Jean Hough McGrath, Co-chair  
Senator Pete Rios  
Representative Mark Maiorana  
Michael Anable, State Land Commissioner  
Gary Blake, Air Space Manager, Luke Air Force Base  
Janice Brewer, Maricopa County Board of Supervisors  
Brig. General Thomas Browning  
Bill Cheatham, City of Yuma  
Steve Jewett, Governor's Southern Arizona Office  
Tom Manfredi, U.S. Marine Corps Air Station  
John Ogden, SunCor Development Company  
Casey Prochaska, Yuma County Board of Supervisors  
Charles Roach, Del Webb's Sun City West  
Elaine Scruggs, Mayor, City of Glendale  
Mark Spencer  
George Sullivan, Federal Aviation Agency

# Arizona Military Airport Preservation Committee

## PURPOSE

In conjunction with the State Land Department, to make recommendations to the Legislature to preserve the long-term viability of military airports and the private property rights of property owners in the vicinity of military airports.

## INTRODUCTION

### *Duties*

Established by Laws 1995, Chapter 62, the Arizona Military Airport Preservation Committee, in conjunction with the State Land Department, is charged with:

- ➔ working with political subdivisions and the Department of Commerce to encourage compatible development on properties in the vicinity of military airports on which day-night average sound level is sixty-five decibels or higher;
- ➔ considering the purchase or exchange of land or development rights as a method of achieving the goals of preserving the long-term viability of military airports and private property rights;
- ➔ studying and promoting a constitutional mechanism to exchange state trust lands for equally-valued private or public lands;
- ➔ creating a data base of ownership and purchase information for properties located in the vicinity of military airports on which the day-night average sound level is sixty-five decibels or higher;
- ➔ considering the accuracy of existing noise contours as they are issued and facilitating the development and distribution of metes and bounds legal descriptions of noise contours to be utilized in the implementation of State law;
- ➔ conducting an engineering survey to assist in the development of legal descriptions for land within the noise contours of Luke Air Force Base and the Marine Air Corp Station - Yuma;
- ➔ conducting a baseline study to determine the condition, mission, growth capacity, potential long-term outlook and obstacles to future utility and development of at least the following military airport bases: Davis-Monthan Air Force Base, Luke Air Force Base, Fort Huachuca, Marine Corps Air Station - Yuma, Barry Goldwater Gunnery Range and Yuma Proving Grounds and;

→ making recommendations to the Legislature.

*Requirements:* Report to the Legislature by December 15 annually.

*Termination:* July 1, 2005

*Other:* Political subdivisions are required to notify the Committee of an proposed residential development on properties in the vicinity of a military airport and experiencing a day-night average sound level of at least sixty-five decibels.

### HISTORICAL NOTES

Created by the Defense Base Closure and Realignment Act of 1990, the Base Closure and Realignment Commission (BRAC) is charged with reviewing the nation's military facilities to make recommendations for installation realignments and closures. BRAC evaluations were conducted in 1991, 1993 and 1995. Arizona was directly impacted by the 1991 BRAC evaluation that resulted in the closure of Williams Air Force Base in 1993.

Laws 1995, Chapter 62, established the Arizona Military Airport Preservation Committee (AMAPC) for the purpose of encouraging the preservation of the long-term viability of Arizona's military airports and the private property rights of property owners in the vicinity of military airports. Additionally, \$200,000 was appropriated from the general fund to the AMAPC for FY 1996 to conduct engineering surveys and related expenses to assist in the development of legal descriptions for land within the noise contours of Luke Air Force Base and the Marine Air Corps Station – Yuma.

The charge of the AMAPC was expanded by legislation passed in 1996 (Laws 1996, Chapter 338) to include the study of noise contours as they are issued and to facilitate the development and distribution of metes and bounds legal description of noise contours. The 1996 legislation also exempted the \$200,000 appropriation from lapsing.

Laws 1997, Chapter 28, expanded the approved use of the \$200,000 appropriation to include the performance of a baseline study to determine the condition, mission, growth capacity, potential long-term outlook and obstacles to future utility and development of Arizona military airport bases. The legislation also specified that Davis-Monthan Air Force Base, Luke Air Force Base, Fort Huachuca, Marine Corps Air Station – Yuma, Barry Goldwater Gunnery Range and Yuma Proving Grounds be included in the baseline study.

Finally, Laws 1999, Chapter 258, establishes agriculture preservation districts for the purpose of maintaining and encouraging existing agricultural uses and maintaining and encouraging open space uses for the lands in the district without impairing private property rights. The districts shall take actions that are consistent with the continued operation and use of military airports or former military airports that are being redeveloped and continued to be operated as airports, and that are located in or near the district. The districts shall encourage voluntary participation.

## **Current Activities**

The Deputy City Attorney for the City of Surprise gave the mayor and council an opinion that over flights of jet aircraft from Luke Air Force base could be considered a "takings". A reply to the Mayor and council of the City of Glendale from the Deputy City Attorney for Glendale denounced the opinion of the Surprise attorney.

The engineering studies have not been completed and there is discussion as to whether "modeling" would suffice. The Air Installation Compatible Use Zones lines are invisible and are ever changing and virtually impossible to determine on the ground. There is approximately \$100,000 to do the engineering studies. (Attachment B)

The issue of compatibility and notice to home buyers remains an issue. The Attorney General's office has given the Committee an "informal opinion" regarding the definition of the term "compatibility". (Attachment C) Though law requires buyers of "new" homes to be informed of military base(s), this requirement does not apply to public or private airports. There is no law regarding levels of information for resale homes.

Finally, Representative Mike Gleason is planning to introduce legislation that would allow a state income tax credit for participation in an agricultural preservation district. Essentially, a board, yet to be created, would decide the amount of the state income tax credit (which can be used over a five year period) that would be granted to an individual who joins the district and allows the property to remain undeveloped. The state income tax credit can be sold to other parties and the total tax credit level cannot exceed \$10,000,000.

## **PROCEEDINGS**

The Committee held one public meeting as follows:

July 26, 1999 (Minutes - Attachment A)

The Committee discussed the Agriculture Preservation District Legislation and how it could be used to protect Luke Air Force Base. There was considerable discussion on the subject of enforcement authority of the legislation that created this Committee and encroachment around military air bases. H.B. 2168, though it never received a Final Read in the House and thus failed to become law, would have put penalties on political sub-division that encroached on the Military Air Bases. The engineering studies, with an appropriation of approximately \$100,000, were discussed. The City of Surprise presented a packet on the ongoing relationship between the City of Surprise and Luke. The Vice-Commander of the 56<sup>th</sup> Fighter Wing at Luke gave the committee a briefing on the aircraft mishaps at Luke Air Force Base during the last year. Norris Nordvold representing the City of Phoenix stated the City had approved final land negotiations to exchange City land for land in the noise zone around Luke.

## **ATTACHMENT A**

8-24-99

ARIZONA STATE LEGISLATURE  
Forty-fourth Legislature – First Regular Session

MILITARY AIRPORT PRESERVATION COMMITTEE

Minutes of Meeting  
Monday, July 26, 1999  
Senate Appropriations Room #109 – 1:00 p.m.

(Tape 1, Side A)

The meeting was called to order at 1:10 p.m. by Chairman Cirillo. The attendance was noted by the secretary.

Members Present

Gary Blake, Chief, Airfield Management, Luke Air Force Base  
Jan Brewer, Supervisor, Maricopa County  
Tom Browning, General, Greater Phoenix Leadership  
Edward Cirillo, State Senator, Cochair  
Martin Hardy, Assistant Manager, Approach Control, Federal Aviation Administration  
(representing George Sullivan)  
Steve Jewett, Director, Southern Arizona Office, Governor Jane Dee Hull  
Jean McGrath, State Representative, Cochair  
John Ogden, President/CEO, SunCore Development Co.  
Charles Roach, Sr. Vice President/General Manager, Del Webb's Sun City West  
Elaine Scruggs, Mayor, City of Glendale

Members Absent

Mike Anable, Director, State Land Commissioner  
Bill Cheatham, City of Yuma  
Thomas Manfredi, U.S. Marine Corps Air Station  
Casey Prochaska, Supervisor, Yuma County  
Pete Rios, State Senator  
Mark Spencer, representing himself, Yuma

Speakers

Shanti Rosset, Senate Assistant Analyst  
Larry Chesley, House Analyst  
Richard W. McComb, City Manager, City of Surprise  
Joan Shafer, Mayor, City of Surprise  
Colonel Stephen E. Bozarth, Vice-Commander, 56<sup>th</sup> Fighter Wing, Luke Air Force Base  
Norris Nordvold, Coordinator, Intergovernmental Affairs, City of Phoenix

Guest list (Attachment 1)

MILITARY AIRPORT  
PRESERVATION COMMITTEE  
July 26, 1999



Senator Cirillo briefly previewed the agenda and asked the members to introduce themselves.

### **Presentation and Discussion of the Agriculture Preservation District Legislation**

Shanti Rosset, Senate Assistant Analyst, presented H.B. 2579, agriculture preservation districts, Chapter 258, in summary (Attachment 2).

Senator Cirillo noted that H.B. 2579 had been jointly sponsored by Representatives Carolyn Allen, Mike Gleason, and himself. He characterized it as a piece of enabling legislation and added that it may be utilized as soon as October 1999, when property owners near Luke Air Force Base come before their county board of supervisors to hear their request for an agriculture preservation district.

Jan Brewer, Supervisor, Maricopa County, asked if the legislation provided funds to pay for the election via the county, or if that burden would fall to those requesting the district. Ms. Rosset indicated that the cost would fall to those proposing the district and the county board of supervisors is permitted to require that they post a bond to ensure that those expenses are met. Ms. Brewer expressed her concern that these costs might be the responsibility of a small number of people, in the case of a few farmers owning large amounts of land, and that the financial burden may therefore be unreasonable.

Ms. Brewer asked if the Legislature intended to fund this legislation in the future. Senator Cirillo indicated that the Growing Smarter Commission is aware of this legislation and it is his hope that an appropriation will be made. Senator Cirillo pointed out that H.B. 2579 is voluntary; however, when a district is put to a vote and at least 51 percent are in favor, the minority will find themselves "forced" to join the district. Senator Cirillo iterated his belief that H.B. 2579 is "a good first step."

### **Presentation by the Attorney General's Office Regarding El Mirage Development**

Ms. Rosset announced that Patrick J. Cunningham, Director, Legislative Affairs, Office of the Attorney General (AG), would not be available to address the Committee. She presented a letter from Mr. Cunningham to the Cochairs (Attachment 3) and noted that he would be willing to speak before the Committee at its next meeting.

Senator Cirillo noted that Mr. Cunningham asserts he hasn't the authority or the funding to provide support on this issue. Ms. Brewer asked who would have the authority to enforce the zoning and land use plans for political subdivisions. Senator Cirillo stated that El Mirage complied with existing law when it notified the Committee that they would adopt a sound attenuation, and that there is nothing more required of them. Ms. Brewer characterized the legislation as "a statute without teeth."

Elaine Scruggs, Mayor, City of Glendale, noted that cities and counties do have enforcement authority.

John Ogden, President/CEO, SunCore Development Co., characterized the AG's response as "a major wimp out," in the way it returns the issue of "compatibility" back to the cities. The cities, Mr. Ogden pointed out, brought this issue to the Committee because of concerns over potential

property rights infringements. He explained that specific language in the state statute is still at issue and that it was inappropriate for the AG to not commit to a definitive answer.

Tom Browning, General, Greater Phoenix Leadership, expressed disappointment in the response and absence of the AG and suggested that the Committee encourage the AG to address this issue "sooner than later." Senator Cirillo indicated that he would be meeting with the AG in August 1999 and would communicate this and other issues to the Attorney General.

General Browning asked Senator Cirillo if the Committee could address the legal aspects of the legislation, as well as seek a greater understanding of "[what] the legislation is really about and [what] the Committee is really about."

Charles Roach, Sr. Vice President/General Manager, Del Webb's Sun City West, asked for what reasons H.B. 2168 (zoning; military airport compatibility) failed and what elements in particular were unpopular with the Legislature.

Representative McGrath explained that the Legislature believes issues of zoning belong to the cities and counties and not to the State. Mr. Roach suggested that the implication of such a stance is that the protection of military air bases resides with cities and counties and not the State.

Senator Cirillo pointed out that Representative McGrath had two bills that failed in the last legislative session and this may be attributable to Governor Hull's request that no legislation be passed that may "tamper" with the upcoming recommendations of the Growing Smarter Commission. Mayor Scruggs stressed that the cities, specifically the City of Glendale, did not oppose the aforementioned legislation as it did not challenge the zoning authority of cities; however, she could not speak to what Governor Hull's position was with regard to these bills. Mayor Scruggs suggested that the real issue, as Mr. Ogden pointed out, is defining the statute. General Browning concurred.

Steve Jewett, Director, Southern Arizona Office, Governor Jane Dee Hull, clarified that the Governor did have a standpoint, with regard to bills that may have had a potential impact on the Growing Smarter recommendations; however, she allowed these bills to work their way through the legislative process and did not actively seek to subvert them. Mr. Roach restated his understanding of the failed legislation: the Governor's Office didn't oppose them, the cities and counties didn't oppose them, the AG was in support of them, and yet they failed. Senator Cirillo explained that the Governor did not want to see any personal property rights bills coming through the Legislature this year until the Growing Smarter recommendations were released, and he suggested that the Legislature might have wished to honor this request.

Larry Chesley, House Analyst, explained, as the analyst who worked primarily on the bill in question, that the bill was never final read in the House, let alone given a chance to be voted on, and that the Governor did not oppose the bill to his knowledge. Senator Cirillo suggested that the demise of the bill was a Leadership decision. Representative McGrath suggested that the votes required to pass the bill were not assured and that, perhaps, it wasn't brought to a vote in order to spare the embarrassment of having the bill fail.

Senator Cirillo iterated his intent to speak with the AG on this point and perhaps secure a better definition of "compatibility" that he can bring back to the Committee.

### Discussion of the Engineering Study

Senator Cirillo noted that there is approximately \$100,000 that has yet to be used for an engineering study; however, the legislation may have to be amended to access the money. He invited comment from the members. Representative McGrath stated that the boundary lines are still unknown and that the substitute engineering study is still needed. She insisted that the money not be used for anything but the engineering study. Senator Cirillo wondered if the agricultural preserve districts legislation might not address this need. Representative McGrath suggested that such a presumption is premature and that the engineering study funds have been appropriated legislatively and may not be used for any other purpose.

General Browning wondered if these funds were bound by a statute of limitations, at which time they might revert back to the general fund. Representative McGrath noted that the Committee will dissolve in 2005, at which time the funds may revert. Ms. Rosset explained that the appropriations are exempt from lapsing and will therefore not revert. She pointed out to the Committee that the Department of Administration is awaiting some guidance from the Committee as to how it intends to use the funds.

Mayor Scruggs pointed out that these funds were created from contributions by various cities and counties and she wondered if these entities would not also be subject to the legislation. Senator Cirillo explained that those contributions were gifts used for the baseline study. Mayor Scruggs asked if perhaps the State funds, not the municipal funds, were used for the baseline study. Senator Cirillo further explained that when the funds were solicited, it was made quite clear that they would be used for a baseline study.

Representative McGrath reminded the Committee of former governor Evan Mecham, who improperly borrowed government money, and she emphasized that once money comes into the government, it may not ever again be used as private money. Mayor Scruggs clarified that she did not seek to have these funds converted for public use. Instead, she wondered if they must be used for an engineering study or if they could instead be transferred over to the AG's Office so that it could use the money to hire a full-time equivalent (FTE) and enforce the statute. Representative McGrath insisted that the funds be used for the baseline study or not at all.

Mr. Ogden speculated that these lines must be definitively determined sooner or later, at which time, the Committee would be requested to provide the funds. He echoed Ms. McGrath's concern that the funds be held until the engineering study is conducted. Mr. Roach concurred with Mr. Ogden and reminded the Committee that the AG contends that, funding aside, they lack enforcement authority. He suggested that the money continue to be set aside for the engineering study. Senator Cirillo noted that, authority and funding aside, the AG never addressed the issue of interpretation, and he stated that he would still press them to get an answer.

Gary Blake, Chief, Airfield Management, Luke Air Force Base, commented that it seemed ridiculous to spend so much money on studying a boundary line that fluctuates from day to day. Senator Cirillo suggested that it was nonsensical to divide individual properties with an arbitrary boundary line.

Mayor Scruggs asked Senator Cirillo to state his understanding of how these funds would be directed. Senator Cirillo stated that, pursuant to the Committee discussion, the funds would not necessarily be used to convert the Air Installation Compatible Use Zones (AICUZ) into a topographical map, but instead be held until such time as they are needed to facilitate and assist up and coming agricultural districts.

Representative McGrath stated that, either way, the engineering study will eventually have to be done. She also asserted that there is reason to believe that landowners would not be unwelcome to having their land divided by a boundary line because this would give them more options, and perhaps less restrictions in some areas, in using their land. In fact, it is acknowledged that district restrictions may, in some cases, impinge on land development and, as a result, land value.

Senator Cirillo stated that the issue is now one of timing, specifically, ought the engineering study be conducted now or later.

Mr. Jewett noted that the boundary lines could be determined via modeling, though, of course, not with the same degree of accuracy as an engineering study; however, the accuracy would be workable. Senator Cirillo acknowledged that modeling as an available option exists and he stated that the decision would not have to be made today.

General Browning stated that at the inception of the baseline study, there was considerable discussion regarding the intent and purpose of the engineering study. General Browning explained that he did not oppose the engineering study; however, he cautioned the committee to be clear in its expectations of such a study and to be specific when charging a company to execute such a study. Further, General Browning speculated that the Committee and a state or local municipality may use the same resultant data in a different way. Senator Cirillo suggested that the Committee would resurrect the testimony of an engineering consultant who addressed the Committee previously regarding the proposed engineering study. This consultant asserted that such a study would be a very simple matter of converting the AICUZ data at an expense of several thousand dollars. General Browning wanted the Committee to be aware that whichever study or model is decided upon to delineate the borders, the Committee may have to defend it.

#### Presentation by the City of Surprise Regarding New Development

Richard W. McComb, City Manager, City of Surprise, presented an information packet on the ongoing relationship between the City of Surprise and Luke Air Force Base (LAFB) to the Committee (Attachment 4, on file in the Chief Clerk's Office only).

Senator Cirillo asked if the Mayor had met with officials from LAFB.

(Tape 1, Side B)

Joan Shafer, Mayor, City of Surprise, indicated that she had not; however, she is making alternate attempts to facilitate the Surprise/LAFB relationship.

Senator Cirillo noted that Surprise is using the 1995 AICUZ study when there is a 1988 AICUZ study and he asked Mr. McComb if that wasn't "a little awkward." Additionally, Senator Cirillo asked how Surprise managed to establish the deed restrictions on the LAFB Auxiliary Three

property. Mr. McComb explained that though LAFB is in the AICUZ territory, the flight patterns, specifically turns, generate a little more noise and traffic. Senator Cirillo clarified that he wanted to know how Surprise circumvented the issue of legality. Mr. McComb indicated that Surprise got the consent of the property owners when putting the "package" together.

Representative McGrath commented that deed restrictions are not a function of government, but rather put in place by the individual property owners. Ms. McGrath further explained that when there are deed restrictions in a political subdivision, it is still the private owner who enforces violations and not the government. Mr. McComb stated that the City of Surprise is approximately 70 square miles, and that it is more restricted where it requires that homes meet the attenuation ordinance. He also indicated that the sound attenuation level is 45.

Mr. Ogden commented that the City of Surprise has been "very up front and straightforward" through the process and he wanted to commend their efforts.

Senator Cirillo noted that there remains the issue of the 1995 vs. the 1998 AICUZ and wondered what might be the result of two proximal communities using two different AICUZ. General Browning commented that, yet again, the Attorney General could shed some light on this issue, the 1988 AICUZ (which is in statute) vs. the 1995 AICUZ (which is not in statute), if he were present to testify to the Committee.

With regard to conducting a noise study, Mr. Roach offered the following considerations: what aircraft ought to be used, what day of the year ought to be used, how many flights ought to be conducted, and how will the test area be bounded when the boundary line fluctuates from day to day. Mr. Roach asserted that for those who insist on living around an air force base, they must accept the fact that they will be subject to overflight, whether it is once per month or once per day. With regard to the 1995 vs. 1988 AICUZ, Mr. Roach indicated that neither was appropriate to use for this purpose.

Senator Cirillo affirmed General Browning's assessment that the AICUZ provide a good "starting point." Mr. Ogden pointed out that there are some cities that are making definitive decisions based on the AICUZ. Mr. Blake countered that the AICUZ was not a "military idea" and that it was originally developed by the Environmental Protection Agency (EPA) to protect the safety and quality of life for people under overflight zones. Mr. Blake stated that the AICUZ is a guideline and that the Committee must make a wise decision regarding the AICUZ, regardless of which version of it is used.

#### Presentation Regarding Recent Accidents at Luke Air Force Base

Colonel Stephen E. Bozarth, Vice-Commander, 56<sup>th</sup> Fighter Wing, Luke Air Force Base, presented a prepared statement on the recent aircraft mishaps at Luke Air Force Base during the last year (Attachment 5).

Senator Cirillo commented that it is unfortunate that there were so many mishaps in such a short period of time; however, it does make the point that the air force is in need of greater funding for maintenance. Senator Cirillo stated that he heard a rumor regarding the Barry Goldwater Range recertification. Colonel Bozarth explained that 1.7 million acres may be withdrawn, while one

million acres will remain in the public domain. Senator Cirillo asked Colonel Bozarth to explain the implications of this to the Committee.

Representative McGrath asked how many of the mishaps occurred in the noise zone. Colonel Bozarth indicated that one out of the six occurred within the noise zone.

Mr. Blake pointed out the value and importance of the LAFB airspace with the land it encompasses and he suggested that a legislative remedy might lend it greater permanence. Colonel Bozarth iterated that LAFB must maintain overflight privileges over 500 feet. Senator Cirillo asked if the land hosts a bighorn sheep population. Colonel Bozarth explained that a tactical crew goes to the day's bomb site each morning with two biologists and if there is a pronghorn siting, then either the target area is changed or bombs are not dropped.

General Browning commented that LAFB and other military ranges have, and continue to, come under scrutiny by environmental groups, especially with regard to the noise level imposed on endangered species as a result of overflight. Senator Cirillo acknowledged this and indicated that it was one of the reasons why discussion of LAFB is on the agenda. Mr. Jewett wondered if a letter from the Committee might improve things or if, from the perspective of the air force, it might create more problems. Senator Cirillo suggested that a letter would serve to inform the State's congressional delegation and that it would not "derail" anything.

Ms. Brewer informed the Committee that she had served in the Legislature when the 1988 AICUZ lines were being developed. Ms. Brewer observed that the Committee seems to be straying from its charge to establish guidelines, and she speculated that the varying communities might end up adopting the version of the AICUZ that suits them best. Senator Cirillo pointed out that the Committee had been given the Solomon task to reconcile boundary lines while preserving private property rights. He explained that between the Attorney General's charge to codify the legislation for cities and counties and Growing Smarter legislation and Agricultural Preserve District legislation, the Committee has "a very difficult row to hoe." Ms. Brewer stated that she is still awaiting a response from county in regard to these issues.

Representative McGrath asked Colonel Bozarth to explain the need for using live ammunition in training maneuvers. Colonel Bozarth explained that at some point in the training process, live ammunition is crucial to complete the training of a pilot. Colonel Bozarth further explained there are many real-life situations that pilots must face in the field, some of them being life-threatening, and without first training with live ammunition, they would be literally unprepared.

Representative McGrath asked how the live ammunition is transported to LAFB. Mr. Blake explained that live ammunition is transported to the base in components and assembled on site. In this way, it serves two purposes: it is available as live ammunition for pilot training and it serves to train soldiers in transporting and assembling live ordinance.

General Browning commented that it is imperative to fully train soldiers, especially with the use of live ordinance, because once their training is complete they can, and have been, sent directly into combat situations, as evidenced by the recent developments in Kosovo and years earlier during Operation: Desert Storm.

Mayor Scruggs commented that Mr. Dishner does not have responsibility to enforce the laws of Arizona and she wondered if the intent of his letter was to harm LAFB or to bring greater attention and provisions to it, as it is challenged by issues of encroachment. Mayor Scruggs did express her appreciation for Mr. Dishner's letter and she indicated that this document will serve those who follow him in this arena. Additionally, Mayor Scruggs vented her frustration at the Attorney General's failure to support the mission and charge of the Committee, and for failing to own up to the responsibilities of her own office.

### Call to the Public

Norris Nordvold, Coordinator, Intergovernmental Affairs, City of Phoenix, stated that the City Council approved final land negotiations on July 7 and are in the process of doing an environmental assessment. Because the City of Phoenix received this land in 1948 from the federal government, Mr. Nordvold explained, Phoenix had to prove that it was trading equal value for the land it intends to exchange. Mr. Nordvold explained that the City is exchanging 640 acres for nearly 1000 acres in the noise zone, which is deemed a fair exchange. With the approval with the County, it is anticipated that signs will be erected that essentially indicate that the land is being protected in the preservation district and the City of Phoenix is one of the first large land owners to contribute to this preservation district.

Senator Cirillo thanked all members and attendees for their effort and involvement.

Without objection, the meeting adjourned at 2:59 p.m.



Seth Goodman, Committee Secretary

(Original minutes, attachments, and tape on file in the Chief Clerk's Office. Copy of minutes on file in the Office of the Senate Secretary.)

**ATTACHMENT B**





JANE DEE HULL  
GOVERNOR

J. ELLIOTT HIBBS  
DIRECTOR

**ARIZONA DEPARTMENT OF ADMINISTRATION**

FINANCE DIVISION - GENERAL ACCOUNTING OFFICE  
STATE CAPITOL, 1700 WEST WASHINGTON, ROOM 290  
PHOENIX, ARIZONA 85007

January 29, 1999

The Honorable Edward Cirillo  
1700 West Washington  
Senate Wing  
Phoenix, AZ 85007

-and-

The Honorable Jean McGrath  
1700 West Washington  
House Wing  
Phoenix, AZ 85007

Dear Senator Cirillo and Representative McGrath:

**Re: December financial status report for the Military Airport Preservation Committee (AMAPC)**

As designated by the AMAPC on November 4, 1997, the General Accounting Office is providing this report on the financial status and activities that have occurred regarding the AMAPC for the month of December, 1998:

	<b>Fund 1000 (General Fund)</b>	<b>Fund 2500 (IGA Fund)*</b>
Beginning Fund Balance as of 12/01/98:	\$107,500	\$99,250
December Receipts:	\$0	\$0
December Disbursements:	\$0	\$99,250
Ending Fund Balance as of 12/31/98:	\$107,500	\$0

\* Fund 2500 for the AMAPC is exclusive to the baseline study.

The activities regarding Fund 2500 - IGA Fund is as follows:

	<b>City of Glendale</b>	<b>City of Sierra Vista</b>	<b>City of Tucson</b>	<b>Maricopa County</b>
Beginning Balance as of 12/01/98:	\$35,580.19	\$4,681.60	\$35,580.19	\$23,408.02
December Receipts:	\$0.00	\$0.00	\$0.00	\$0.00
December Disbursements:	\$35,580.19	\$4,681.60	\$35,580.19	\$23,408.02
Ending Balance as of 12/31/98:	\$0	\$0	\$0	\$0

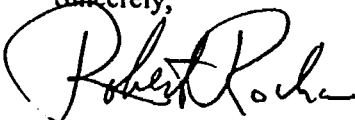
As of December 31, 1998, the year-to-date disbursement activities regarding the baseline study and the engineering survey is as follows:

	Baseline Study	Engineering Survey
YTD Disbursements from Fund 1000:	\$92,500.00	\$0
YTD Disbursements from Fund 2500:		
From City of Glendale contribution:	\$38,000.00	n/a
From City of Sierra Vista contribution:	\$5,000.00	n/a
From City of Tucson contribution:	\$38,000.00	n/a
From Maricopa County contribution:	\$25,000.00	n/a
<b>Total YTD Disbursements:</b>	<b>\$198,500.00</b>	<b>\$0</b>

As the baseline study activities have been completed, we will no longer be reporting on the baseline study portion of the AMAPC's appropriation and IGA fund in future monthly reports with the exception of the year-end report. Additionally, to assist with our planning, please inform this office of the AMAPC's intent regarding the engineering survey appropriation as there has been no activity recorded for this item since its inception in 1995.

If you have any questions regarding this report, please call me at 542-5405 or Madonna Neuwirth at 542-5629.

Sincerely,



Robert Rocha  
State Comptroller

RR:cn

cc: J. Elliott Hibbs, ADOA  
Lee Baron, ADOA  
Tom Betlach, OSPB  
Richard Stavneak, JLBC  
Bret Cloninger, OSPB  
Jim Hillyard, JLBC  
Victoria Clark, Senate Research  
Tami Stowe, House Research

## **ATTACHMENT C**



STATE OF ARIZONA

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October 22, 1999

The Honorable Edward J. Cirillo  
Arizona State Senate  
1700 West Washington Street  
Phoenix, AZ 85007

Re: Definition of "Compatibility"

Dear Senator Cirillo:

Your request for an informal opinion regarding the definition of the term "compatibility" as used in Arizona Revised Statutes ("A.R.S.") § 28-8481 has been referred to me for a response. An informal opinion reflects the analysis and conclusions of the responding attorney. Because informal opinions are not reviewed by the Attorney General and are not formal opinions authorized by A.R.S. § 41-193(A)(7), such opinions do not represent a statement of the official position of the Office of the Attorney General.

Arizona law requires that political subdivisions "with territory in the vicinity of a military airport . . . adopt land use plans and adopt and enforce zoning regulations to assure development *compatible* with the high noise and accident potential generated by military airport operations that have or may have an adverse effect on public health and safety." A.R.S. § 28-8481(A) (emphasis added). Political subdivisions are to "adopt, administer and enforce" these zoning regulations "in the same manner as the comprehensive zoning ordinance," except that variances are not permitted absent "a specific finding that the purpose of military airport compatibility is preserved." A.R.S. § 28-8481(C).

As you know, the terms "compatible" and "compatibility" are not defined in statute. When terms are not defined by statute, they are to be given their ordinary meaning. A.R.S. § 1-213. The word "compatible" means "capable of existing together without discord or disharmony." WEBSTER'S THIRD INTERNATIONAL DICTIONARY 463 (1993). Applied to A.R.S. § 28-8481, this requires political subdivisions to develop zoning regulations to ensure that development near military airports is capable of coexisting with the noise and accident potential of that airport operation. This requires a factual analysis that considers the nature of both the specific military airport and the surrounding area.

In addition, federal regulations addressing the compatibility of local development and military airports provide some useful guidance regarding the meaning of the term "compatibility" in this context. See 32 Code of Federal Regulations ("C.F.R.") § 256. Federal regulations require the Secretaries of the Military Departments to develop, implement and maintain a program to study and develop an Air Installation Compatible Use Zone (AICUZ) program. 32 C.F.R. § 256.5(a). Like A.R.S. § 28-8481, this program focuses on safety and noise problems near military airports. 32 C.F.R. § 256.5(f)(1). These studies are to include: (1) actual noise and safety surveys; (2) identification of present incompatible land uses; and (3) identification of land that, if inappropriately developed, would be incompatible with the military airport. 32 C.F.R. § 256.5(a)(1)-(3). The Legislature specifically mentioned these federal reports in 1986 when it amended the statute regarding compatible development near military airports. 1986 Ariz. Sess. Laws ch. 266. The 1986 legislation included the following statement of legislative intent:

the air installation compatible use zone report is available to the political subdivisions having territory in the vicinity of the military airports of this state and [that] the report or other impact zone studies of equal or greater professional standing should be used to determine the aircraft noise and accident potential zones in developing a compatible land use plan.

*Id.*

This reinforces that the federal regulations and the reports that those regulations require provide useful guidance regarding the factors relevant to determining whether development is compatible with a military airport. The federal policy "is to work toward achieving compatibility between air installations and neighboring civilian communities by means of a compatible land use planning and control process conducted by the local community." 32 C.F.R. § 256.4(b)(1)(i). The federal regulations do not define the term compatible, but include factors relevant to noise and accident potential that are to be studied. See 32 C.F.R. § 256.3. See also 14 C.F.R. Part 150 (describing "airport noise compatibility program" for public use airports).

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The federal regulations require that noise levels of certain levels be plotted on a map. 32 C.F.R. §§ 256.3(d)(2)(i); 256.10(f) (requiring that, at a minimum, areas with a Day-Night Average Sound Level noise descriptor (Ldn) of 65, 70, 75 and 80 be plotted as part of AICUZ studies). Regarding safety, the federal regulations note that areas immediately beyond the runways and along primary flight paths are subject to more aircraft accidents than other areas. 32 C.F.R. § 256.3(c)(1)(i). The regulations refer to "accident potential zones" and make recommendations regarding various types of land uses in different accident potential zones. See 32 C.F.R. § 256.8.

In sum, State law requires local officials to assure that development is compatible with military airport operations in the area. This requires a factual determination by political subdivisions of the noise and accident potential of certain areas and an analysis of what types of development can exist under those conditions. Federal AICUZ studies should be useful to the local governments responsible for making these determinations.

Respectfully,



Patrick Cunningham  
Director of Legislative Affairs

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